In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 843

JAMES RICHARD BAKER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals is reported at 310 F. 2d 924.

JURISDICTION

The judgment of the court of appeals was entered on November 20, 1962. A petition for rehearing was denied on January 18, 1963. The petition for a writ of certiorari was filed on February 18, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the judge's charge on intent, to which there was no objection at the trial, was so generalized as to be fatally defective and noticeable as plain error.

STATEMENT

Petitioner was convicted in the United States District Court for Nevada under an indictment charging that he transported a woman from Tiller, Oregon, to Elko, Nevada, for the purpose of prostitution, in violation of 18 U.S.C. 2421. He was sentenced to imprisonment for five years, and the conviction was affirmed on appeal.

The evidence for the government consisted for the most part of the testimony of the woman, Carol Thomas, whom petitioner had met in a bus going from Elko to Reno, Nevada (R. II, 8-9). In September 1959, petitioner visited Miss Thomas in Tracy, California, where she was living with a sister, and asked her to go to Reno with him, saying that they would be married (R. II, 9-10, 73, 85). After they left Tracy, but while still in California, petitioner suggested that he knew an easy way to make money, *i.e.*, by Miss Thomas' working as a prostitute (R. II, 11, 17). They proceeded to petitioner's home in Tiller, Oregon (R. II, 18). A few days later, they left Tiller for Nevada (R. II, 19). In Reno, Miss Thomas had her hair dyed platinum blonde and the two then drove to a club in Elko, Nevada (R. II, 20-22). Petitioner spoke with someone in another room and told Miss Thomas that the woman said that she did not have

room for anyone, but he knew they did because they were always needing girls (R. II, 23). They then went to a house in Wadsworth, Nevada where petitioner left Miss Thomas. She worked as a prostitute for four or five days and gave the money to petitioner (II R. 24-27).

She subsequently worked at another place, but then returned to Tracy (II R. 28-32). Petitioner called for her later and took her to Carson City, Nevada, and Peoria, Illinois, where she again worked as a prostitute until she returned to Oregon (R. II, 33-39).

In charging the jury, the judge stated (II R. 159) (in addition to the instruction on intent set forth at pp. 5-7 of the petition for a writ of certiorari):

> You will note that the acts charged in the indictment are alleged to have been done wilfully. An act is done wilfully if done voluntarily and purposely and with the specific intent to do that which the law forbids; that is to say, with evil motive or bad purpose, either to disobey or to disregard the law.

No exceptions were taken to the instructions.

ARGUMENT

There is no merit in petitioner's argument that the instructions on intent were so generalized that, although no objections were noted with respect thereto at the trial, they should be deemed grounds for reversal under Rule 52, F.R. Crim. P. Contrary to petitioner's contention, the trial judge did relate his general comments on intent to the specific charges of the indictment. Pointing out that the jury must find the

acts done wilfully, he defined "wilfully" to require specific intent to do that which the law forbids, with evil motive or bad purpose.

The suggestion that the instructions were insufficient because the court did not charge that the dominant purpose of the transportation must be to have the girl engage in prostitution has no application to the facts of this case. As the court of appeals pointed out, no evidence was offered at the trial suggesting any lawful motive for the transportation of Miss Thomas from Oregon to Nevada. It is true that Miss Thomas testified that, before she left Tracy, petitioner said they would be married. But her testimony was clear that, even before they got to Tiller (the starting point of the unlawful transportation charged), petitioner suggested that she make money by working as a prostitute. And the evidence was undisputed that, apart from a stop to have Miss Thomas' hair dyed, petitioner drove Miss Thomas directly from Tiller to a house where he tried to get her work as a prostitute in Nevada.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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